

Office-Supreme Court, U.S.

FILED

FEB 17 1983

ALEXANDER L. STEVAS,
CLERK

NO. 82-1125

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

JONATHAN L. HAAS,
Petitioner,
v.
EDGAR HASH and ELAINE HASH,
Respondents.

Reply to Response to Petition for a Writ
of Certiorari to the Court of Appeals of
Arizona

Jonathan L. Haas
In Propria Persona
P.O.Box 7461
Phoenix, Arizona 85011
602-277-6001

QUESTIONS PRESENTED

1. Whether Federal questions were raised in the State courts?

2. Whether substantial questions of deprivation of Constitutional rights were raised by Petitioner in the State courts?

TABLE OF CONTENTS

QUESTIONS PRESENTED	1
TABLE OF CONTENTS	11
TABLE OF AUTHORITIES.	111
OPINION BELOW	2
REASONS FOR GRANTING THE WRIT	2
I. Federal Questions Were Raised in the State Courts	3
II. Substantial Questions of Deprivation of Constitutional Rights were Raised by Petitioner.	7
CONCLUSION.	11
CERTIFICATE OF SERVICE.	12

TABLE OF AUTHORITIES

Cases

<u>Andrus v. Idaho</u> 445 U.S. 715, 63 L.Ed.2d 739 (1980)	10
<u>Beck v. Washington</u> 369 U.S. 541 (1962)	4
<u>Bridge Proprietors v. Hoboken Co.</u> 1 Wall 116	6
<u>Cardinale v. Louisiana</u> 394 U.S. 437 (1969)	4, 5
<u>Chicago, Burlington & c. v. Chicago</u> 166 U.S. 226	6
<u>Cline v. Flagler Sales Corp.</u> 207 So.2d 709 (Fla.App. 1968)	9
<u>Executive Commercial Services, Ltd.</u> v. Dasalakis, 74 Ill.App.3d 760, 393 N.E.2d 1365 (1979)	9
<u>Green Bay & Mississippi Canal Co.</u> v. Patten Paper Company, 172 U.S. 58 (1898)	5, 6
<u>Hudson v. Zumwalt</u> 64 Cal.App.2d 866, 149 P.2d 457 (1944)	9
<u>Hurgren v. Union Mutual Life</u> Insurance Company, 141 Cal.585, 75 P. 168 (1904)	8
<u>Jaffe v. Stone</u> 18 Cal.2d 146, 114 P.2d 335 (1941)	8

<u>Miller v. Jamaica Savings Bank</u> 50 A.D.2d 865, 377 N.Y.S.2d 89 (1975)	9
<u>Minasian v. Sapse</u> 145 Cal.Rptr. 829, 80 Cal.App.3d 823 (1978)	8
<u>F.G.Oxley Stave Co. v. Butler</u> <u>County</u> , 166 U.S. 648 (1897)	4, 5
<u>Powell v. Brunswick County</u> 150 U.S. 433	6
<u>Roby v. Colchour</u> 146 U.S. 153	6
<u>Sayward v. Denney</u> 158 U.S. 180	6
<u>Tower Special Facilities, Inc. v.</u> <u>Investment Club, Inc.</u> , 104 Wis.2d 221, 311 N.W.2d 225 (App. 1981)	9
<u>Weaver v. Superior Court</u> 95 Cal.App.3d 166, 156 Cal.Rptr. 745 (1979)	9
<u>Wong v. Tabor</u> 442 N.E.2d 1279 (Ind.App. 1981)	9

Constitution

United States, Fourteenth Amendment	11
-------------------------------------	----

Statutes

28 U.S.C. § 1257(3)	3, 4
---------------------	------

Rules

United States Supreme Court, Rule 17	8
--------------------------------------	---

NO. 82-1125

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

JONATHAN L. HAAS,
Petitioner,
v.
EDGAR HASH and ELAINE HASH,
Respondents.

Reply to Response to Petition for a Writ
of Certiorari to the Court of Appeals of
Arizona

Petitioner, Jonathan L. Haas, prays
that a Writ of Certiorari issue to review
the judgment of the Court of Appeals of the
State of Arizona entered in this matter on
July 27, 1982.

OPINION BELOW

The Opinion of the Court of Appeals of the State of Arizona, and the judgment of the Superior Court of the State of Arizona in and for the County of Maricopa are reproduced in the Appendix to the Petition.

REASONS FOR GRANTING THE WRIT

The Arizona Court of Appeals' decision denied Haas of due process of law. Their holding that the procedural requirement of a "favorable termination" rather than a "final termination" should not be allowed to interfere with HAAS's right to substantive due process. The holding by the Arizona Court of Appeals that any civil action terminated pursuant to negotiations, agreement and stipulation, even to such collateral matters as attorney fees, which have no relation to the merits of the case, does not constitute a favorable termination

as is necessary for maintenance of an action for malicious prosecution deprives the victim/defendant in a malicious and unfounded civil action of any recourse unless he is able to protract the judicial process to a full hearing on the merits. This requirement of protracted litigation resulting in a decision on the merits raises substantial questions of due process requiring plenary consideration.

The refusal by the trial court and the Court of Appeals to recognize that the malicious and unfounded civil action complained of was an out and out fraud and that the Corrected Corrected Judgment was procured by collateral fraud was a travesty of justice and must be reformed.

I. Federal Questions Were Raised
in the State Courts.

Respondents HASH argue that this Court lacks jurisdiction under 28 U.S.C. 1257(3) to review the final judgment rendered by

the Arizona Court of Appeals because no federal questions were raised in the State courts. Section 1257(3) establishes this Court's jurisdiction, in part, "...where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution..." and "...where any...right, privilege... is specially set up or claimed under the Constitution...of...the United States."

In support of their argument HASH cites Cardinale v. Louisiana 394 U.S. 437 (1969); F.G.Oxley Stave Co. v. Butler County 166 U.S. 648 (1897); and Beck v. Washington 369 U.S. 541 (1962), misinterpreting them to require the federal questions presented in the Petition for Writ of Certiorari to have been presented in the same words in the State courts. Cardinale, the most recent of these cases, refers to "...the petitioner's admitted

failure to raise the issue he presents here in any way below...". 394 U.S. at 439.

The federal questions of denial of due process and repugnancy to the Constitution were raised in the State courts and delineated on pages 13 and 14 of the Petition.^{1/}

Hash argues that this Court "cannot review [a] final judgment, even if it denied some title, right, privilege or immunity...unless...[it] was 'specially set up and claimed' in the state court..." citing Oxley, 166 U.S. at 653. Oxley was decided by this Court in 1897, however this matter was thoroughly discussed in Green Bay & Mississippi Canal Company v. Patten Paper Company 172 U.S. 58 (1898).

1. See Petitioner/Plaintiff Haas's Response to Motion for Summary Judgment, page 2, lines 5-9, filed in the trial court and Petitioner/Appellant Haas's Motion for Rehearing, page 10, lines 14-23, filed in the appellant court (App. 36a-37a of Petition).

"But no particular form of words or phrases has ever been declared necessary in which the claim of Federal rights must be asserted. It is sufficient if it appears from the record that such rights were specially set up or claimed in the state court in such manner as to bring it to the attention of the court.

'The true and rational rule,' this court said in **Bridge Proprietors v. Hoboken Co.**, 1 Wall 116, 143,, 'is that the court must be able to see clearly, from the whole record, that a certain provision of the Constitution or act of Congress was relied on by the party who brings the writ of error, and that the right thus claimed by him was denied.' In **Roby v. Colchour**, 146 U.S. 153, 159, it was said 'our jurisdiction being invoked, upon the ground that a right or immunity, specially set up and claimed under the Constitution or authority of the United States, has been denied by the judgment sought to be reviewed, it must appear from the record of the case either that the right, so set up and claimed, was expressly denied, or that such was the necessary effect in law of the judgment.' 'If it appears from the record by clear and necessary intendment, that the Federal question must have been directly involved, so that the state court could not have given judgment without deciding it, that will be sufficient.' **Powell v. Brunswick County**, 150 U.S. 433, 440: **Sayward v. Denney**, 158 U.S. 180; **Chicago, Burlington & c. v. Chicago**, 166 U.S. 226". 172 U.S. at 67.

Although these Constitutional issues were raised and argued in both the state trial court and the state appellant courts,

these state courts did not choose to directly confront the issues. Their reason for avoiding the issues may well have been as argued by HAAS in his Motion for Rehearing.

"The Third Party Complaint filed by Hash, as counsel, in the underlying malicious action was an out and out fraud. The games played by the trial judge and Hash in concocting an unfavorable termination of the underlying malicious action was a travesty of justice. Even the appellate court has shielded this incompetent attorney Hash. If the Courts will not protect the people from incompetent and dishonest attorneys, then to whom shall the people turn?" (App. 36a-37a of Petition).

II. Substantial Questions of
Deprivation of Constitutional
Rights were Raised by Petitioner.

HASH argues that the Constitutional questions raised concern insubstantial claims. Obviously HASH views the denial of due process involved here in a different light than HAAS.

The questions raised by HAAS relate to an attorney utilizing collateral fraud to avoid civil prosecution for filing an

unfounded civil action to cover up his own incompetence or negligence. The petitioner/victim's recourse to recover damages sustained due to this unfounded and malicious civil action rests upon the state court's upholding the Constitutional rights of the victim to due process. The judgment in the underlying unfounded and malicious action was reformed in an attempt to change a favorable termination into a final, but unfavorable termination, in a mickey mouse attempt to thwart justice.

As to jurisdiction under Rule 17, Supreme Court Rules, paragraph 1.(b). relates to conflicting decisions of state courts of last resort on federal questions. California requires a final termination of an unfounded malicious civil action.

Minasian v. Sapse 145 Cal.Rptr. 829, 80 Cal.App.3d 823 (1978); Jaffe v. Stone 18 Cal.2d 146, 114 P.2d 335 (1941); Hurgren

v. Union Mutual Life Insurance Company
141 Cal. 585, 75 P. 168 (1904); Hudson v. Zumwalt 64 Cal.App.2d 866, 149 P.2d 457 (1944). The Arizona Court of Appeals requires a favorable termination (App. 5a to Petition) citing Weaver v. Superior Court, 95 Cal.App.3d 166, 156 Cal.Rptr. 745 (1979); Cline v. Flagler Sales Corp., 207 So.2d 709 (Fla.App. 1968); Executive Commercial Services, Ltd. v. Dasalakis, 74 Ill.App.3d 760, 393 N.E.2d 1365 (1979); Miller v. Jamaica Savings Bank, 50 A.D.2d 865, 377 N.Y.S.2d 89 (1975); Tower Special Facilities, Inc. v. Investment Club, Inc., 104 Wis.2d 221, 311 N.W.2d 225 (App. 1981); as well as two authorities.(App. 5a to Petition). The Arizona Court of Appeals miscites Wong v. Tabor 442 N.E.2d 1279 (Ind.App. 1981) as requiring a favorable termination also. This conflict of state court decisions was used by the Arizona

Court of Appeals as an excuse to cover up HASH's actions and deny HAAS due process of law.

It is interesting to note that the Arizona Court of Appeals held this was a question of first impression in Arizona (App. 5a to Petition) and then issued a Memorandum Decision (App. 1a to Petition).^{2/} In effect the Arizona Court of Appeals abrogated their sworn duty to impartiality and distorted the common law in Arizona to shield an errant attorney from answering for his actions. It then said this law is not applicable to anyone else. The Arizona Court of Appeals created a personal common law ruling solely to deny HAAS of his rights to redress in the state courts. This was a

2. The denomination of a decision as Memorandum does not affect this Court's jurisdiction. See Andrus v. Idaho 445 U.S. 715, 63 L.Ed.2d 739 (1980).

deliberate and intentional denial of
Petitioner HAAS's Constitutional rights
to due process of law and is repugnant to
the Constitution of the United States.

CONCLUSION

The federal questions were presented
in both the state trial court and the state
appellate courts and were substantial
questions of deprivation of Constitutional
rights. In its opinion, the Arizona Court
of Appeals made several determinations
which, taken singly or together, deprived
Petitioner of Constitutional due process
as guaranteed by the Fourteenth Amendment
and as interpreted in decisions of this
Court.

For these reasons, a Writ of Certiorari
should be granted.

Respectfully submitted,

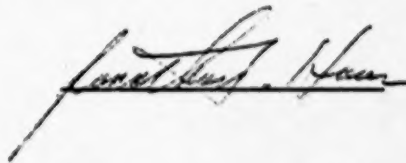
Jonathan L. Haas
Jonathan L. Haas
Petitioner

P.O.Box 7461
Phoenix, Arizona 85011
602-277-6001

Date: February 16, 1983

CERTIFICATE OF SERVICE

This is to certify that three copies of this Reply have been served on all parties required to be served, i.e., on Respondent by placing same in an envelope and depositing it in the United States mail, with first class postage prepaid, addressed to counsel of record as follows: Jefferson L. Lankford, Esq., Jennings, Strouss & Salmon, 111 West Monroe, Phoenix, Arizona 85003, on this 16th day of February, 1983.

A handwritten signature in cursive script, appearing to read "Janet L. Lankford", is written over a horizontal line.